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15           *Attorneys for Defendant Facebook, Inc.*

16       MAXIMILIAN KLEIN et al., on behalf of  
17       themselves and all other similarly situated,

18           Plaintiffs,

19       v.  
20       FACEBOOK, INC., a Delaware Corporation  
21       headquartered in California,

22           Defendant.

23           Case No. 5:20-cv-08570-LHK

24           **STIPULATED PROTECTIVE ORDER**

25           Judge: Hon. Lucy Koh

26           Re: Dkt. No. 89

27           **MODIFIED BY THE COURT**

1     1.     PURPOSES AND LIMITATIONS

2         Disclosure and discovery activity in this action are likely to involve production of confidential,  
3 proprietary, or private information for which special protection from public disclosure and from use for  
4 any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby  
5 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties  
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses to  
7 discovery and that the protection it affords from public disclosure and use extends only to the limited  
8 information or items that are entitled to confidential treatment under the applicable legal principles. The  
9 parties further acknowledge, as set forth in Section 12.4, below, that this Stipulated Protective Order  
10 does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the  
11 procedures that must be followed and the standards that will be applied when a party seeks permission  
12 from the court to file material under seal.

13     2.     DEFINITIONS

14         2.1     Challenging Party: a Party or Non-Party that challenges the designation of information or  
15 items under this Order.

16         2.2     “CONFIDENTIAL” Information or Items: any trade secret or other confidential research,  
17 development, or commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(1)(G), or any  
18 document, transcript, or other material containing such information that has not been published or  
19 otherwise made publicly available not involving a violation of this Order, including  
20 becoming part of the public record through trial or otherwise. This includes (i) information copied or  
21 extracted, summarized or compiled from Confidential Information, and (ii) testimony, conversations, or  
22 presentations by Parties or their Counsel that might reveal Confidential Information.

23         2.3     Counsel (without qualifier): Outside Counsel and In-House Counsel (as well as their  
24 support staff).

25         2.4     Designated In-House Counsel: means six In-House Counsel designated by Defendant  
26 who are authorized to access Highly Confidential Information pursuant to Paragraph 7.3(b) or additional  
27 In-House Counsel who may be authorized to access Highly Confidential Information pursuant to  
28 Paragraph 7.6 of this Order.

1       2.4     Designating Party: a Party or Non-Party that designates information or items that it  
2 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
3 CONFIDENTIAL.”

4       2.5     Disclosure or Discovery Material: all items or information, regardless of the medium or  
5 manner in which it is generated, stored, or maintained (including, among other things, testimony,  
6 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery  
7 in this matter.

8       2.6     Expert: a person with specialized knowledge or experience in a matter pertinent to the  
9 litigation, including employees of the firm with which the expert is associated or independent  
10 contractors who assist the expert’s work in this action, who has been retained by a Party or its Counsel  
11 to serve as an expert witness or as a consultant in this action.

12      2.7     “HIGHLY CONFIDENTIAL” Information or Items: extremely sensitive “Confidential  
13 Information or Items,” disclosure of which to another Party or Non-Party would create a substantial risk  
14 of serious harm that could not be avoided by less restrictive means.

15      2.8     In-House Counsel: any attorneys who are employees of a party to this action, as well as  
16 paralegals, secretaries, and clerical and administrative personnel employed by a party. In-House Counsel  
17 does not include Outside Counsel.

18      2.9     Non-Party: any natural person, partnership, corporation, association, or other legal entity  
19 not named as a Party to this action.

20      2.10    Outside Counsel: attorneys who are not employees of a party to this action but are  
21 retained to represent or advise a party to this action or are affiliated with a law firm which has been  
22 retained to represent or advise that party, as well as attorney support staff.

23      2.11    Party: any party to this action, including all of its officers, directors, employees,  
24 consultants, retained experts, and Outside Counsel (and their support staffs).

25      2.12    Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in  
26 this action.

27      2.13    Professional Vendors: persons or entities that provide litigation support services (e.g.,  
28 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or

1 retrieving data in any form or medium) and their employees and subcontractors.

2       2.14 Protected Material: any Disclosure or Discovery Material that is designated as  
3 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL.”

4       2.15 Protected Person: any Person (including a Party or Non-Party) that either voluntarily or  
5 under compulsory process, has provided or provides Protected Material.

6       2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing  
7 Party.

8       3. SCOPE

9           The protections conferred by this Stipulation and Order cover not only Protected Material (as  
10 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,  
11 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or  
12 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections  
13 conferred by this Stipulation and Order do not cover the following information: (a) any information that  
14 is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public  
15 domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this  
16 Order, including becoming part of the public record through trial or otherwise; and (b) any information  
17 known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the  
18 disclosure from a source who obtained the information lawfully and under no obligation of  
19 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a  
20 separate agreement or order.

21       4. DURATION

22           Even after final disposition of this litigation, the confidentiality obligations imposed by this  
23 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
24 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
25 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and  
26 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits  
27 for filing any motions or applications for extension of time pursuant to applicable law.

1       5. **DESIGNATING PROTECTED MATERIAL**

2       5.1     Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-  
3 Party that designates information or items for protection under this Order must take care to limit any  
4 such designation to specific material that qualifies under the appropriate standards. The Designating  
5 Party must designate for protection only those parts of material, documents, items, or oral or written  
6 communications that qualify – so that other portions of the material, documents, items, or  
7 communications for which protection is not warranted are not swept unjustifiably within the ambit of  
8 this Order.

9           Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to  
10 be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber  
11 or retard the case development process or to impose unnecessary expenses and burdens on other parties)  
12 expose the Designating Party to sanctions.

13          If it comes to a Designating Party’s attention that information or items that it designated for  
14 protection do not qualify for protection, that Designating Party must promptly notify all other Parties  
15 that it is withdrawing the mistaken designation.

16       5.2     Manner and Timing of Designations. Except as otherwise provided in this Order (see,  
17 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
18 Discovery Material that qualifies for protection under this Order must be clearly so designated before  
19 the material is disclosed or produced.

20           Designation in conformity with this Order requires:

21              (a) for information in documentary form (e.g., paper or electronic documents, but  
22 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix  
23 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” to every page of the document.

24          Defendant, as a Party, is not required to re-review its productions to the Federal Trade  
25 Commission and the House Judiciary Committee to designate materials, and may re-produce such  
26 productions to Plaintiffs as Highly Confidential. However, to the extent that Facebook produces any  
27 documents in such productions in *State of New York et al v. Facebook, Inc.*, Case No. 1:20-cv-03589-  
28 JEB (D.D.C.) (“State AG Case”) or *Federal Trade Commission v. Facebook, Inc.*, Case No. 1:20-cv-

1 03590-JEB (D.D.C.) ("FTC Case"), with a lower confidentiality designation (*i.e.*, "Confidential" or not  
 2 designated), Facebook shall timely re-produce such documents in this case, to reflect the lower  
 3 confidentiality designation or non-designation in the State AG or FTC Cases. In addition, Plaintiffs may  
 4 challenge the designation of any documents Facebook produced to the Federal Trade Commission and  
 5 the House Judiciary Committee, and re-produced here as Confidential or Highly Confidential, pursuant  
 6 to Section 6 herein, but agree not to challenge the designation of such documents wholesale, on the basis  
 7 that their designation was mass, indiscriminate, or routinized. For the avoidance of doubt, Plaintiffs  
 8 may, however, challenge the designation of any documents Facebook produced to the Federal Trade  
 9 Commission and the House Judiciary Committee, and re-produced here.

10                   (b) for testimony given in deposition or in other pretrial or trial proceedings, a Protected  
 11 Person shall have 30 days after the date when a complete and final copy of the transcript has been made  
 12 available to identify the specific portions of the testimony as to which protection is sought and to specify  
 13 the level of protection being asserted. Only those portions of the testimony that are appropriately  
 14 designated for protection within the 30 days shall be covered by the provisions of this Stipulated  
 15 Protective Order. Alternatively, when it is impractical to identify separately each portion of testimony  
 16 that is entitled to protection and it appears that substantial portions of the testimony may qualify for  
 17 protection, a Designating Party may specify that the entire transcript shall be treated as  
 18 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL."

19                   Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other  
 20 proceeding to include Protected Material so that the other parties can ensure that only authorized  
 21 individuals who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A) are  
 22 present at the time Protected Material is discussed. The use of a document as an exhibit at a deposition  
 23 shall not in any way affect its designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL."

24                   Transcripts containing Protected Material shall have an obvious legend on the title page that the  
 25 transcript contains Protected Material, and the title page shall be followed by a list of all pages  
 26 (including line numbers as appropriate) that have been designated as Protected Material and the level of  
 27 protection being asserted by the Designating Party. The Designating Party shall inform the court reporter  
 28 of these requirements. Any transcript that is prepared before the expiration of a 30-day period for

1 designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL”  
 2 in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated  
 3 only as actually designated.

4                   (c) for information produced in some form other than documentary and for any other  
 5 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
 6 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY  
 7 CONFIDENTIAL.”

8         5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate  
 9 qualified information or items does not, standing alone, waive the Designating Party’s right to secure  
 10 protection under this Order for such material. Upon timely correction of a designation, the Receiving  
 11 Party must make reasonable efforts to assure that the material is treated in accordance with the  
 12 provisions of this Order.

13         6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

14         6.1     Timing of Challenges. Any Party may challenge a designation of confidentiality at any  
 15 time prior to 30 days before the first day of trial. Unless a prompt challenge to a Designating Party’s  
 16 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary  
 17 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
 18 challenge a confidentiality designation by electing not to mount a challenge promptly after the original  
 19 designation is disclosed.

20         6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution process by  
 21 providing written notice of each designation it is challenging and describing the basis for each challenge.  
 22 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the  
 23 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective  
 24 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by  
 25 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within  
 26 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for  
 27 its belief that the confidentiality designation was not proper and must give the Designating Party an  
 28 opportunity to review the designated material, to reconsider the circumstances, and, if no change in

designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, they shall comply with the discovery dispute resolution procedure outlined in Judge DeMarchi's Standing Order for Civil Cases.  
~~(and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.~~ Failure by the Designating Party to make such a motion including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Each such discovery letter brought pursuant to this provision the parties shall attest that they have ~~motion must be accompanied by a competent declaration affirming that the movant has complied with~~ the meet and confer requirements imposed in the preceding paragraph- and the Standing Order for Civil Cases.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party.

Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. All parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

If the Court finds the designation of Highly Confidential Information or Confidential Information to have been inappropriate, the challenged designation shall be considered rescinded, however, in the case of Highly Confidential Information the Court (or Challenging Party and Designating Party, by agreement, absent a contrary ruling from the Court) may determine that the materials may appropriately be designated Confidential.

## 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting,

1 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the  
 2 categories of persons and under the conditions described in this Order. When the litigation has been  
 3 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
 4 DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a location and in a  
 6 secure manner that ensures that access is limited to the persons authorized under this Order.

7       7.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the  
 8 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information  
 9 or item designated “CONFIDENTIAL” only to:

10               (a) the Receiving Party’s Outside Counsel, as well as attorney support staff who have  
 11 signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

12               (b) the officers, directors, and employees (including In-House Counsel) of the Receiving  
 13 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
 14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);  
 15               (c)  
 16               (b) an individual named plaintiff or class representative to whom disclosure is  
 17 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to  
 18 Be Bound” (Exhibit A), provided that such person shall not take possession of such information, and  
 19 provided that such person has no involvement in decision-making for a competitor of Facebook;

20               (d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
 21 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to  
 22 Be Bound” (Exhibit A);  
 23               (d) the court and its personnel;

24               (e) court reporters and their staff, professional jury or trial consultants, and Professional  
 25 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
 26 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

27               (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary  
 28 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
 agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or

1 exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and  
2 may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and (h) any  
3 mediator or arbitrator that the Parties engage in this action or that the court appoints who has signed the  
4 “Acknowledgment and Agreement to Be Bound” (Exhibit A).7.3 Disclosure of “HIGHLY  
5 CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing  
6 by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY  
7 CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel, as well as attorney support staff to whom it is  
9 reasonably necessary to disclose the information for this litigation and who have signed the  
10 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

11 (b) Designated In-House Counsel of the Defendant (1) who has no involvement in  
12 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3) who  
13 has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit B), and (4) as to whom the  
14 7.6(a) or 7.6(d)  
procedures set forth in paragraph ~~7.4(a) or 7.4(d)~~, below, have been followed;

15 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
16 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to  
17 Be Bound” (Exhibit A);

18 (d) the court and its personnel;

19 (e) court reporters and their staff, professional jury or trial consultants, and Professional  
20 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

22 (f) the author or recipient of a document containing the information or a custodian or other person  
23 who otherwise possessed or knew the information.

24 (h) any mediator or arbitrator that the Parties engage in this action or that the court  
25 appoints who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

26 **7.5 Rendering Advice:** Nothing in this Order is intended to bar or otherwise prevent Plaintiffs’  
27 counsel from rendering advice to their respective clients with respect to this action and, in the course of  
28 rendering such advice, from relying upon their examination or knowledge of High Confidential or

1 Confidential Information.

2       7.6     Procedures for Approving or Objecting to Disclosure of "HIGHLY CONFIDENTIAL"  
3     Information or Items to Designated In-House Counsel

4                 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating  
5 Party, Defendant may at any time before trial identify Designated In-House Counsel to whom Highly  
6 Confidential information or items may be disclosed. To qualify for access under this subpart,  
7 Designated In-House Counsel shall execute a Designated In-House Counsel Agreement Concerning  
8 Confidentiality in the form of Exhibit B attached hereto (which executed versions shall be maintained by  
9 Outside Counsel for Defendant and available for inspection upon the request of the Court, any Party, or  
10 any non-Party Protected Person).

11                 (b) A Party that makes a request and provides the information specified in the preceding  
12 respective paragraphs may disclose Highly Confidential Information to the identified Designated In-  
13 House Counsel unless, within 14 days of delivering a copy of Exhibit B, the Party receives a written  
14 objection from the Designating Party. Any such objection must set forth in detail the grounds on which  
15 it is based.

16                 (c) A Party that receives a timely written objection must meet and confer with the  
17 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement  
18 parties shall comply with the  
19 within seven days of the written objection. If no agreement is reached, the ~~Party seeking to make the~~  
~~discovery dispute resolution procedure outlined in Judge DeMarchi's Standing Order for Civil Cases.~~  
~~disclosure to Designated In-House Counsel may file a motion as provided in Civil Local Rule 7 (and in~~  
~~compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any~~  
20 Any discovery letter filed pursuant to this provision  
21 ~~such motion~~ must describe the circumstances with specificity, set forth in detail the reasons why the  
22 disclosure to Designated House Counsel is reasonably necessary, assess the risk of harm that the  
23 disclosure would entail, and suggest any additional means that could be used to reduce that risk. In  
any such letter must describe  
24 addition, ~~any such motion must be accompanied by a competent declaration describing~~ the parties'  
25 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer  
26 discussions) and ~~set~~ setting forth the reasons advanced by the Designating Party for its refusal to approve  
27 the disclosure.

28                 In any such proceeding, the Party opposing disclosure to Designated In-House Counsel shall bear

1 the burden of proving that the risk of harm that the disclosure would entail (under the safeguards  
2 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Designated  
3 House Counsel.

4                   (d) Defendant may at any time before the trial of this action request disclosure of Highly  
5 Confidential Information to additional In-House Counsel by consent of the Protected Person who made  
6 such designation (the "Designating Party") or motion to the Court. Defendant shall provide a written  
7 notice to the Designating Party and all Parties to this action stating the basis for disclosure. Defendant  
8 must meet and confer with the Designating Party to try to resolve the matter by agreement within seven  
9 days of the written notice. If no agreement is reached, ~~Defendant may file a motion with the Court. The~~ the parties shall comply with the discovery dispute  
10 ~~Designating Party will have seven days to respond to such motion.~~ resolution procedures outlined in Judge DeMarchi's Standing Order for Civil Cases.  
11 Defendant will not disclose any  
12 Highly Confidential Information to additional In-House Counsel pending resolution of the dispute. If  
13 the Court finds the designated In-House Counsel has a particularized need for access to the Highly  
14 Confidential Information that outweighs the risk of harm to the Designating Party or the public interest,  
15 Defendant will be able to disclose the Highly Confidential Information to its designated In-House  
16 Counsel.

16       PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
17 LITIGATION

18                   Parties may not disclose Highly Confidential or Confidential Information in other  
19 litigation absent a valid subpoena or court order. If a Party is served with a subpoena or a court order  
20 issued in other litigation that compels disclosure of any information or items designated in this action as  
21 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" that Party must:

22                   (a) promptly notify in writing the Designating Party. Such notification shall include a  
23 copy of the subpoena or court order;

24                   (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
25 other litigation that some or all of the material covered by the subpoena or order is subject to this  
26 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

27                   (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
28 Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its Protected Material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

**9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a discovery request to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that

1 is subject to the confidentiality agreement with the Non-Party before a determination by the court.<sup>1</sup>  
2 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking  
3 protection in this court of its Protected Material.

4 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material  
6 to any person or in any circumstance not authorized under this Stipulated Protective Order, the  
7 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized  
8 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)  
9 inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order,  
10 and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound"  
11 that is attached hereto as Exhibit A.

12 12. **MISCELLANEOUS**

13 12.1 **Right to Further Relief.** Nothing in this Order abridges the right of any person to seek its  
14 modification by the court in the future.

15 12.2 **Right to Assert Other Objections.** By stipulating to the entry of this Protective Order no  
16 Party waives any right it otherwise would have to object to disclosing or producing any information or  
17 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any  
18 right to object on any ground to use in evidence of any of the material covered by this Protective Order.

19 12.3 **Copy of Order.** When discovery is sought from a Non-Party in this action after entry of this  
20 Order, a copy of this Order must accompany the discovery request.

21 12.4 **Filing Protected Material.** Without written permission from the Designating Party or a  
22 court order secured after appropriate notice to all interested persons, a Party may not file in the public  
23 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material  
24 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a  
25 court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local  
26 Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue

27  
28 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a  
2 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is  
3 denied by the court, then the Receiving Party may file the Protected Material in the public record  
4 pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the court.

5       12.5 Export Control. Disclosure of Protected Material shall be subject to all applicable laws and  
6 regulations relating to the export of technical data contained in such Protected Material, including the  
7 release of such technical data to foreign persons or nationals in the United States or elsewhere. The  
8 Producing Party shall be responsible for identifying any such controlled technical data, and the  
9 Receiving Party shall take measures necessary to ensure compliance.

10      13. FINAL DISPOSITION

11           Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
12 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As  
13 used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries,  
14 and any other format reproducing or capturing any of the Protected Material. Whether the Protected  
15 Material is returned or destroyed, the Receiving Party must submit a written certification to the  
16 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline  
17 that (1) identifies (by category, where appropriate) all the Protected Material that was returned or  
18 destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations,  
19 summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding  
20 this provision, Counsel otherwise authorized to received Protective Material pursuant to this Order are  
21 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
22 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
23 work product, and consultant and Expert work product, even if such materials contain Protected  
24 Material, with the exception of paper copies of source code. Any such archival copies that contain or  
25 constitute Protected Material remain subject to this Protective Order as set forth in Section 4  
26 (DURATION).

AS MODIFIED BY THE COURT,

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.  
2  
3

DATED: May 3, 2021

Virginia K. DeMarchi

~~Lucy H. Koh~~

United States District Judge

5 Virginia K. DeMarchi

6 United States Magistrate Judge

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DATED: April 30, 2021

By /s/ Shana E. Scarlett

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18 *Attorneys for Defendant Facebook, Inc.*

## **SIGNATURE ATTESTATION**

I am the ECF User whose identification and password are being used to file the foregoing.

Pursuant to Civil Local Rule 5-1(i), I hereby attest that the other signatories have concurred in this filing.

Dated: April 30, 2021

By: /s/ Sonal N. Mehta  
Sonal N. Mehta

**EXHIBIT A**

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
full address], declare under penalty of perjury that I have read in its entirety and  
the Stipulated Protective Order that was issued by the United States District Court for the  
District of California on [date] in the case of *Klein v. Facebook*, Case No. 5:20-cv-08570-  
to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
do acknowledge that failure to comply could expose me to sanctions and punishment in the  
court. I solemnly promise that I will not disclose in any manner any information or item  
to this Stipulated Protective Order to any person or entity except in strict compliance with  
of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone number] as my  
California agent for service of process in connection with this action or any proceedings related to  
enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed:

Printed name:

---

[printed name]

Signature:

[signature]

1 EXHIBIT B  
2

3 IN-HOUSE COUNSEL AGREEMENT CONCERNING CONFIDENTIALITY  
4

5 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full  
6 address], am employed by \_\_\_\_\_ as  
7 \_\_\_\_\_.  
8

9 I declare under penalty of perjury that I have read in its entirety and understand the Stipulated  
10 Protective Order that was issued by the United States District Court for the Northern District of  
11 California on [date] in the case of *Klein v. Facebook*, Case No. 5:20-cv-08570-LHK.

12 I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
13 understand and acknowledge that failure to comply could expose me to sanctions and punishment in the  
14 nature of contempt. I solemnly promise that I will not disclose in any manner any information or item  
15 that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with  
16 the provisions of this Order.

17 I further agree to submit to the jurisdiction of the United States District Court for the Northern  
18 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if  
19 such enforcement proceedings occur after termination of this action.

20 I hereby appoint \_\_\_\_\_ [print or type full name] of  
21 \_\_\_\_\_ [print or type full address and telephone number] as my  
22 California agent for service of process in connection with this action or any proceedings related to  
23 enforcement of this Stipulated Protective Order.

24 Date: \_\_\_\_\_  
25

26 City and State where sworn and signed: \_\_\_\_\_  
27

28 Printed name: \_\_\_\_\_  
29 [printed name]

Signature: \_\_\_\_\_  
[signature]